

**Local 360, Sheet Metal Workers' International Association, AFL-CIO and United Piping and Erecting Company, an Employer-Member of Lansing Mechanical Contractors Association and Local Union No. 388, United Association of the Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO; and the Five Cities Association and its Employer-Member, Cooney Engineering Company. Case 7-CD-392**

April 10, 1981

### DECISION AND ORDER QUASHING NOTICE OF HEARING

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by United Piping and Erecting Company, herein called United Piping, on October 20, 1980, alleging that Local 360, Sheet Metal Workers' International Association, AFL-CIO, herein called Sheet Metal Workers, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring United Piping to assign certain work to employees of Cooney Engineering Company, herein called Cooney, represented by Sheet Metal Workers rather than to United Piping's employees represented by Local Union No. 388, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, herein called Pipefitters.

Pursuant to notice a hearing was held before Hearing Officer Raymond Kassab on November 5 and 6, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, Sheet Metal Workers and Pipefitters filed briefs which have been duly considered.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

#### I. THE BUSINESS OF THE EMPLOYERS

The parties stipulated, and we find, that United Piping maintains offices at 3012 North Seventh Avenue, Lansing, Michigan, where it is engaged in the construction industry as a mechanical contractor. During the 12 months preceding the hearing, United Piping purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Michigan.

The parties stipulated, and we find, that Cooney Engineering has offices at 21600 Wyoming, Oak Park, Michigan, where it is engaged in the construction industry as a sheet metal, heating, and ventilating contractor. During the 12 months preceding the hearing, Cooney Engineering purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Michigan.

The parties also stipulated, and we find, that United Piping and Cooney are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Sheet Metal Workers and Pipefitters are labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE DISPUTE

##### A. *Background and Facts of the Dispute*

The Christman Company, Inc., a general contractor, is engaged in building a performing arts center on the campus of Michigan State University in East Lansing, Michigan. After entering into a contract with Christman to serve as the mechanical contractor on the project, United Piping assigned the plumbing and pipefitting work to its own employees represented by Pipefitters. United Piping is a member of the Lansing Mechanical Contractors which has a collective-bargaining agreement with Pipefitters.

Pursuant to the terms of its contract with Christman, United Piping also is responsible for performing the project's sheet metal and other related work. Since it does not employ any sheet metal workers, United Piping published written specifications for this portion of the job so that local subcontractors could submit bids to obtain the work. These specifications did not include any reference to the work entailed in the handling of heating, ventilating, and air-conditioning units containing coils, herein called HVAC units, which is the subject of the instant dispute. Following the receipt of telephone bids in mid-September 1979,<sup>1</sup> United Piping awarded the sheet metal work at the fine arts center to Cooney Engineering.

On September 20, Cooney sent United Piping its "confirming quote" which set forth the sheet metal work that Cooney would perform on the project. Under the heading "Install Only," this confirma-

<sup>1</sup> All dates herein are in 1979, unless otherwise indicated.

tion letter states, as relevant herein: "1) A.H.U. [HVAC units] (W/Coils 1/2 Labor [sic]." Thereafter, Cooney received an invoice dated November 1, in which United Piping noted, *inter alia*, Cooney's offer that there be a "composite crew for [handling] A.H.U. with coils." Cooney is a member of The Five Cities Association which has a collective-bargaining agreement with Sheet Metal Workers. Thereafter, Cooney assigned the sheet metal work at the jobsite to its employees who are represented by Sheet Metal Workers.

Arthur Faggion, Jr., United Piping's president, testified at the hearing that his Company's usual practice is to assign the entire disputed work to its employees represented by Pipefitters for reasons of efficiency and economy of operations. When asked whether he ever anticipated that Cooney employees would help perform the disputed work, Faggion replied: "It's like they've [Cooney] got composite crew in there, money for it . . . . Its nice that they have it in there, [but] we don't use it." Faggion further stated that certain companies in the Lansing area may have a standard bidding practice whereby the sheet metal contractor is responsible in whole or in part for handling HVAC units on the jobsite. According to Faggion, however, United Piping would have accepted Cooney's bid regardless of whether it provided for funds to cover a portion of the labor costs on the disputed work.

After the project commenced on the Michigan State campus, United Piping delegated responsibility for assigning the disputed work to its general foreman, Bob Eddington, who is a member of Pipefitters. Eddington then assigned all the disputed work to United Piping's employees who are represented by Pipefitters. Sheet Metal Workers immediately protested that the work should be done with a composite crew in accordance with the agreement between United Piping and Cooney. Then, on or about October 16, 1980, Cooney employees represented by Sheet Metal Workers sat on the HVAC units to prevent their installation by United Piping's employees who are represented by Pipefitters. This conduct resulted in a cessation of work on the HVAC units at the project.

#### B. The Work in Dispute

At the hearing, United Piping, Cooney, Pipefitters, and Sheet Metal Workers stipulated that the work in dispute involves the handling of heating, ventilating, and air-conditioning units containing coils from the time they arrive at the jobsite until completion of the installation process.

#### C. Contentions of the Parties

Sheet Metal Workers argues that United Piping and Cooney entered into a binding contract concerning the assignment of the disputed work. Based on this agreement, Sheet Metal Workers contends that Cooney is the employer for half the disputed work and, thus, has the capacity to assign such work to its employees who are represented by Sheet Metal Workers. Thus, in Sheet Metal Workers' view, United Piping breached the contract when it assigned all the disputed work to its employees represented by Pipefitters. In the alternative, Sheet Metal Workers asserts that a 1956 "Interim Agreement" between the Pipefitters and Sheet Metal Workers Internationals is dispositive of the work in dispute here.<sup>2</sup> It points out that the interunion agreement provides that the disputed work is to be performed by a composite crew comprised of an equal number of workers represented by each Union. Finally, Sheet Metal Workers claims that there is a real possibility that the dispute will recur at other jobsites unless the Board makes a broad award of the work. Therefore, it requests that the Board extend the scope of any award of the work to cover the performance of the disputed work wherever Sheet Metal Workers' territorial jurisdiction coincides with that of Pipefitters.

At the hearing, Cooney and The Five Cities Association agreed with the Sheet Metal Workers' position.

United Piping contended at the hearing that the award of the disputed work to employees represented by Pipefitters is appropriate in view of its assignment of the work and efficiency and economy of operations.

Pipefitters asserts that the memorandums exchanged between United Piping and Cooney do not constitute a valid contract between the parties. Thus, for the same reasons urged by United Piping, Pipefitters claims that the disputed work should be awarded to employees represented by it. Additionally, Pipefitters points out that its existing collective-bargaining agreement with United Piping covers the disputed work, that employees represented by it possess the requisite skills to perform such work, and that United Piping traditionally has assigned this work to employees represented by it. Finally, it urges that the scope of the Board's award be limited to the work in dispute at the Michigan State University performing arts center.

<sup>2</sup> It is undisputed that the interim agreement of 1956 covers the type of work involved in the instant dispute. While the agreement provides for the division of the work described therein, it contains neither enforcement mechanics nor provisions by which disagreement as to its application must be resolved.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and (2) there is no agreed-upon method for the voluntary resolution of the dispute.

With respect to (1), above, the record discloses that on October 16, 1980, sheet metal workers sat on the HVAC units at the jobsite to prevent their installation by United Piping's employees. Based on the foregoing and the parties' stipulation to this effect, we are satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated.

With respect to (2), above, the parties stipulated that there is no agreed-upon method for the voluntary resolution of this dispute because Cooney and The Five Cities Association are not bound by the procedures of the Impartial Jurisdictional Disputes Board, herein called IJDB. Contrary to the parties' view, however, we do not find that their stipulation is dispositive of this issue. The record herein clearly shows that Cooney submitted a bid on the Michigan State project which contained funds for performing the disputed work. In doing so, it appears that Cooney was adhering to a bidding practice employed by other sheet metal contractors in the Lansing area. Upon accepting Cooney's bid, United Piping thus gained the capacity to assign the disputed work to a composite crew comprised of its own employees represented by Pipefitters and Cooney's employees represented by Sheet Metal Workers, if it so desired. We find no evidence, however, that United Piping ever relinquished control over the assignment of such work. Thus, United Piping retained the option to assign the disputed work solely to its employees represented by Pipefitters in accordance with their collective-bargaining agreement. Subsequently, United Piping assigned this work exclusively to its own employees. We therefore conclude that United Piping is the sole employer herein for the purposes of assigning the disputed work.<sup>3</sup> In view of this finding, we also conclude that Cooney and The Five Cities Association are no longer involved in the instant dispute.

The evidence shows that all the parties to this dispute, United Piping, Pipefitters, and Sheet Metal Workers, are bound to a voluntary method for the resolution of jurisdictional disputes through the procedures established by the International Juris-

dictional Disputes Board. In this regard, the evidence reveals, as noted, that the Employer is signatory to an agreement between the Lansing Mechanical Contractors Association and the Pipefitters. That agreement, which is effective from June 1, 1980, through May 31, 1982, contains the following provision in article XIX with respect to the settlement of jurisdictional disputes:

*Section 7(a).* In signing this Agreement the undersigned agrees to be bound by the terms and provisions of the Agreement effective June 1, 1980, as amended by Agreement effective October 1, 1949 [sic], creating the National Joint Board for Settlement of Jurisdictional Disputes. In particular the undersigned agrees to be bound by the provision of the Agreement which states, "any decision or interpretation by the Joint Board (or Hearings Panel) shall immediately be accepted and complied with by all parties signatory to this Agreement." This authorization shall run for the term of the Agreement and shall continue in effect for each year thereafter unless specifically terminated at the renewal date of said Agreement which is May 31, 1982.

The rules and regulations of the IJDB clearly specify that an employer may become bound to its procedures, *inter alia*, by signing a collective-bargaining contract agreeing to be so bound. Since the Employer has signed such a contract with Pipefitters, we find that both the Employer and Pipefitters have agreed to resolve their jurisdictional disputes in the manner provided by the IJDB.

With respect to the Sheet Metal Workers, it is well settled that, in the absence of evidence to the contrary, the Sheet Metal Workers, as a member of the Building and Construction Trades Department, AFL-CIO, is a signatory to the agreement creating the IJDB, and, thus, is bound by its determination of jurisdictional disputes.<sup>4</sup>

Accordingly, since all parties to this dispute are bound to a voluntary method for resolving jurisdictional disputes, we shall quash the notice of hearing issued herein.

#### ORDER

It is hereby ordered that the notice of hearing issued in this proceeding be, and it hereby is, quashed.

<sup>3</sup> See *Local 895, United Brotherhood of Carpenters, AFL-CIO (George A. Fuller Company, Inc., et al.)*, 186 NLRB 152, 153 (1970).

<sup>4</sup> See, e.g., *Local Union No. 70, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (F. W. Owens and Associates, Inc.)*, 205 NLRB 1171 (1973).